



Nyaata v Evangelical Lutheran Church in Kenya (ELCK) being sued through its Officials namely Joseph Ochola, Muchiri Kariuki & Benjamin Lemiso (Cause 732 of 2019) [2023] KEELRC 250 (KLR) (2 February 2023) (Ruling)

Neutral citation: [2023] KEELRC 250 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 732 OF 2019
BOM MANANI, J
FEBRUARY 2, 2023

BETWEEN

JUDITH EVUNZU NYAATA CLAIMANT

AND

EVANGELICAL LUTHERAN CHURCH IN KENYA (ELCK) BEING SUED THROUGH ITS OFFICIALS NAMELY JOSEPH OCHOLA, MUCHIRI KARIUKI AND BENJAMIN LEMISO RESPONDENT

RULING

1. Through the Statement of Claim filed on 31st October 2019, the Claimant has sued the Respondent for alleged unfair termination. The Claimant asserts that officers of the Respondent pushed her into resigning from employment due to unfair labour practices. She prays that the court issues a declaration in this regard and grants her an order for compensation.
2. The Respondent has denied liability for the suit. Whilst admitting that the Claimant was its employee, the Respondent denies that she was terminated unfairly.
3. The Respondent appears to suggest that there was assignment of the Claimant's services to some other entity between 2015 and 2017 and that the responsibility of paying the Claimant's salary shifted to this other entity that was running a project referred to as ELCK Say No to FGM Project. It does appear that the Respondent's case is that whilst with the project, the Claimant performed dismally, a matter that led to the eventual collapse of the project. That following this collapse, the Claimant voluntarily resigned from employment despite pleas by the Respondent that she continues serving.



Application to Strike out the Claim

4. At the close of pleadings, the Respondent applied to strike out the claim through the application dated 26th October 2022. In the alternate, the Respondent has prayed that either its name or the names of the three individuals sued as officials of the Respondent be struck off the case.
5. The basis of the application is straight forward. The Respondent argues that there is no proper defendant in the cause. Consequently, the case is a non-suit and is a fit candidate for striking out.
6. It is the Respondent's case that being an unincorporated body registered under the Societies Act, it can only be sued through its registered officials whom the Respondent suggests ought to be the trustees of the institution. In the Respondent's view, to the extent that this case has been instituted without bringing its trustees on board, it is bad in law.
7. The Respondent further contends (through this application) that the three individuals cited as its officials were not officials of the church at the time of institution of the suit. Thus, they could not have been properly sued as officials of the church. The Respondent argues that as a matter of fact, Mr. Muchiri Kariuki to date is not an official of the church. Thus, he was improperly sued.
8. It is the Respondent's contention that the Statement of Claim filed by the Claimant does not indicate the nexus between the three individuals sued as officials of the Respondent church and the Respondent. As a result, it is argued that the case against the three is without sound basis in law. It is an abuse of the court process, hopeless, bad in law, scandalous and ought to be struck out.

Analysis

9. It is perhaps important to begin by pointing out that the Claimant acknowledges that the Respondent is a society registered under the *Societies Act*. The Claimant avers that she has brought these proceedings against the said Respondent through the three individuals whom she describes as officials of the church.
10. At paragraph two (2) of the defense, the Respondent concedes the Claimant's assertion that it is an association that is registered under the *Societies Act*. Whilst the Respondent denies that Muchiri Kariuki is or has been its official, it is noteworthy that there is no similar denial in respect of Benjamin Lemosi and Joseph Ochola. Consequently, the court concludes that the Respondent admits that the latter two individuals were its officials at least at the time of filing the claim and defense.
11. Despite this implied admission, the Respondent now seeks to dispute, through the current application to strike out the suit, the status of the two individuals within its rank and file. In my humble view, it is not open to the Respondent to dispute, through this application, a fact that it has conceded in its pleadings under the guide of raising a point of law. If it wishes to challenge the legal and factual position that has been admitted in the defense, the Respondent must first amend the statement of defense.
12. Second, there is nothing in the statement of defense challenging the competence of the suit on the ground that it has been instituted against individuals who are not the Respondent's trustees. Similarly, in the application dated 26th October 2022, the competence of the suit is not questioned on the ground that it has been filed against individuals who are not trustees of the Respondent. Rather, the suit appears to be challenged on the ground that the Claimant has not demonstrated the nexus between the three individuals sued as officials of the church and the Respondent organization. In the Respondent's counsel's view, the Respondent being an unincorporated body and there being no nexus between the three individuals purportedly sued on its behalf and the said Respondent, the suit is in effect a non-suit.



13. Importantly, in the affidavits in support of the application, which are statement on oath, there is no mention of the Respondent challenging the competence of the suit on the basis of the three individuals sued in the action not being its trustees. The grounds of attack in the said affidavits appear to be matters other than that the suit ought to have been filed against the trustees of the Respondent.
14. The issue of the incompetence of the case because of the non-inclusion of the Respondent's trustees in the cause appears to have been raised for the first time in the Respondent's counsel's submissions in support of the application. It is not founded in the pleadings, application and affidavits filed by the Respondent, at least expressly.
15. The matter of want of inclusion of the Respondent's trustees in the suit having not been expressly raised in the application dated 26th October 2022 and having only come up for the first time in the submissions by counsel for the Respondent, it is doubtful that it can provide a valid ground for the drastic orders sought in the application. It is appreciated that as a general rule, a party can raise a point of law at any stage of the case without having pleaded it in his primary pleadings. However, where the point of law is the foundation for a formal interlocutory application, it is generally expected that the point will be expressly set out in the application.
16. Third, it is noted that despite being directly mentioned in the Statement of Claim, Benjamin Lemosi and Joseph Ochola have not sworn affidavits challenging their inclusion in the suit as officials of the Respondent. As well, the affidavit by Muchiri Kariuki does not allude to the two individuals having granted the said Muchiri Kariuki their authority to swear to the issues of fact that he has on their behalf. It is therefore difficult for the court to reach the conclusion that these two (Joseph Ochola and Benjamin Lemosi) have challenged their inclusion in the proceedings in their capacities as officials of the Respondent.
17. The foregoing notwithstanding, I have carefully considered the law on the matters raised. Whilst it is clear that unincorporated bodies can only sue or be sued through their recognized officials, it is by no means settled that such officials must be the organization's registered trustees.
18. The Respondent's case (as framed in counsel's submissions) appears to be that only trustees of unincorporated bodies may sue or be sued on behalf of such entities. However, on the Respondent's own authorities, it appears that such bodies can sue or be sued through either their trustees or their other officials. Further, the need for such officials to be registered in order to act on behalf of the organization appears not to be cast in stone contrary to the submissions by counsel for the Respondent. A few decisions will illustrate this.
19. In *Kituo Cha Sheria v John Ndirangu Kariuki & another* [2013] eKLR, the High Court stated as follows:-

"As a general rule, unincorporated legal persons including societies, clubs and business-names can only bring proceedings through their registered or elected officials or in their proprietor's names."
20. In *Pius Watene D Maina v Director General Kenya Urban Roads Authority & 5 others* [2020] eKLR, the Land and Environment Court expressed itself on the matter as follows:-

"..... the capacity to sue or be sued on behalf of the church rests with the trustees."



21. In *African Orthodox Church of Kenya v Charles Omuroka & another* [2014] eKLR, the High Court observed as follows:-

“There is no doubt therefore, that both the Plaintiff and the 2nd Defendant as societies or Associations registered under the Societies Act are not legal entities capable of suing and being sued in their own names. They have no legal capacity to institute proceedings in any court in their own names and cannot maintain such proceedings. They can only sue through Trustees, if they have one or in the names of their officials in a representative capacity.”

22. In *Living Water Church International v City Council of Nairobi* [2008] eKLR, the High Court observed as follows:-

“One may ask that, if the society, has no legal status to sue or be sued in its name, then how can such a society move the court, for vindication of its rights. The answer is simple, it moves to vindicate its rights, through its registered officials, mandated to take action on its behalf as provided for in its constituting or creating instrument namely the, “constitution”.”

23. In *Trustees Kenya Redeemed Church & Anor v Samuel M’Obiya & 5 others* [2011] eKLR the High Court observed as follows:-

“Indeed, it is trite that a society registered under the Societies Act, including a religious organization, can only sue or be sued through its officials.”

24. In *J. D. Construction Limited v Evangelist Teresia Wairimu Kinyanjui* [2019] eKLR, the High Court rejected the argument that a suit filed against officials of a church other than its registered trustees was fatally defective. It observed as follows:-

“The applicant submitted that a registered society can only sue or be sued in the name of its registered officials.... The main issue that falls for determination is whether the respondent’s suit is defective and ought to be struck out on the basis that it has not been lodged against the registered officials/trustees of Faith Evangelistic Ministries..... In the instant case and having regard to the contents of annexure “GK1” I find that the plaintiffs’ suit was instituted against the defendant in her capacity as an official of FEM as the said annexure clearly lists her as a director of the said church and thus an official of the said organization within the meaning of Section 3 of the Societies Act..... My further finding is that the instant case is distinguishable from the cases cited by the applicant which refer to the suits filed by Church Societies directly instead of through their officials. In this regard, the plaintiffs case would have been defective had it been filed against FEM as the sole defendant.”

25. In *Bakari Kea v Evangelical Lutheran Church in Kenya (ELCK) through Walter Obare Omwanza & 2 others* [2017] eKLR, the Employment and Labour Relations Court observed as follows:-

“On the issue of the 1st, 2nd and 3rd persons mentioned as Respondents being wrongfully enjoined in this case; in determining this issue, I note that the persons named as Respondents herein are the officials of the Evangelical Lutheran Church in Kenya (ELCK) who are the Arch Bishop, Ag. Secretary General and Treasurer respectively..... I note the Defendants so named are sued as officials of the Respondent ELCK. This is the proper way of instituting suit against a registered Society as per the law.....The contention by the named ELCK officials that they are wrongly enjoined in this case has no basis and is rejected.”



26. What emerges from the above decisions is that courts agree that suits by or against unincorporated bodies must be filed through their recognized officials. However, there is no agreement that these officials must be registered or that they must be trustees of the organizations.

27. The Court of Appeal appears to lean towards the position that all that a party suing an unincorporated body needs to do is to institute the case against the officials of the body. In *Anderson Mole Munyaya & 3 others v Morris Sulubu Hare* [2017] for instance, the court observed as follows:-

“It is not in dispute that the 4th appellant is registered under the Societies Act and as such, it is an unincorporated body which lacks the requisite legal capacity to sue or be sued. See *Grace Mwenda Muthuri v The Trustees of Agricultural Society of Kenya* - Civil Appeal No. 250 of 2015 (unreported). It can only sue and be sued through its office holders. Section 2 of the Societies Act defines an officer –

“officer”, in relation to a society, means the president, vice-president, chairman, deputy chairman, secretary or treasurer thereof, or any member of the committee, council or governing body thereof, or any person who holds in the society any office or position analogous to the foregoing, but does not include a trustee, auditor or patron who takes no part in the management of the society;..”

28. In *Finmax Community Based Group & 3 others v Kericho Technical Institute* [2021] eKLR, the Court of Appeal observed as follows:-

“The 1st appellant is an unincorporated association and therefore in law is not a legal personality with the capacity to sue or to be sued. For a long time, courts have held that such bodies could not sue or be sued.

However, with the advent of the 2010 *Constitution*, this position appears to have changed. Article 260 which is the Interpretation section of the Constitution defines “a person” to include;

“... a company, association or other body of persons whether incorporated or unincorporated”.

“.....the question today is not whether unincorporated entities may commence action or how actions against them may be commenced, but rather, the manner of commencing proceedings. It is equally also settled that they cannot maintain an action or actions brought against them in their names.

Proceedings on their behalf or against them can only be through the registered officials, whose particulars, names and capacity must clearly be indicated in the suit.”

29. In *Ephuntus Kibara Guchu v Grace Gathoni Matu & 4 others (Officials of Multipurpose Women Group)* [2020] eKLR, the Court of Appeal observed as follows:-

“.....it has consistently been held that registered societies do not have legal personalities capable of suing and being sued in their own names but through their officials or trustees in accordance with their respective constitutions.

In the present case, the learned Judge appears to have overlooked that the society was sued through its officials with the result that he fell into error in ordering the striking out of the appellant’s “case in the lower court.”



30. In the Court of Appeal decision of *Anderson Mole Munyaya & 3 others v Morris Sulubu Hare* (supra), it is suggested that an official of a society for purposes of representing the unincorporated body under the Societies Act could be any of the officers mentioned under section 2 of the Act which includes: the President; Vice President; Chairman; Deputy Chairman; Secretary; or Treasurer; or any person who holds in the society any office or position analogous to the foregoing.
31. In this suit, the Respondent does not deny in its defense that Joseph Ochola and Benjamin Lemosi were its officials at least at the point of filing suit. The suit was brought against these officers for and on behalf of the Respondent. This, it appears to me, was in line with the current practice as sanctioned by both the superior court of record and the Court of Appeal.
32. The question whether the said individuals remain officials of the Respondent after institution of the suit is a matter of fact to be determined through evidence at the trial of the case. The obligation to establish this fact lies with the Claimant unless it is shown that this is one of the matters that are contemplated under section 112 of the Evidence Act. Therefore, unless conceded by the parties, it is not a matter to be interrogated at this preliminary stage as it will require the production of evidence.
33. I appreciate the argument by the Respondent's counsel that it is desirable that suits by or against unincorporated bodies be brought in the names of or against the registered trustees of the unincorporated bodies due to the stability that is guaranteed by the perpetual nature of the office of trustee. Understandably, suing other officials who are amenable to leave office after short durations of time leads to unnecessary inconvenience to the parties. It is only desirable that trustees be the ones to be sued to avoid such inconvenience. However, in my humble view and informed by case-law, such suits are not rendered defective merely because they have been filed by or against non-trustees. This point is alluded to in the case of *Skair Associates Architects v Evangelical Lutheran Church of Kenya & 4 others* [2015] eKLR when the learned Judge stated as follows:-

“It was immaterial as the Plaintiff argued that the holders of the offices were not permanent as they would change with every election. It is for that reason that suits filed against a Board of Trustees would be a more viable option as it has perpetual succession.”

34. In *Finmax Community Based Group & 3 others v Kericho Technical Institute* [2021] eKLR the Court of Appeal suggests that if suits involving unincorporated bodies are filed against non trustees, the names of the officials must be disclosed in the pleadings: not just their titles. The court observed as follows:-

“In this appeal, the 1st appellant, being an unincorporated organization, had no capacity to be sued in its own name. The respondent could only institute the suit as against named officials.

Titles like Chairman, secretary or treasurer cannot be used as those are not legal persons against whom orders may be executed by the successful party in the proceedings.”

35. The net consequence of the foregoing is that parties who sue officials who are not registered trustees of unincorporated bodies must accept the inconvenience of altering their pleadings every time there is a change in the officials of the organization. However, such change does not render the suit incompetent.
36. Therefore, if Benjamin Lemosi has since left office as is contended by the Respondent church, it is up to the Claimant to consider amending the Claim to bring on board his replacement. Similarly, if new officials have since joined the offices of Acting General Secretary and Treasurer as suggested in the official search dated 19th July 2022, it is up to the Claimant to consider amending her claim to reflect these changes in the offices of the Respondent church. However, the suit remains competent.



37. The Respondent makes the argument that because the framing of the pleadings shows that it is the church that has been sued through its officials, the church is the principal Respondent in the action. That as a result, the suit is bad in law as it has been filed against an unincorporated body. In the Respondent's view, the pleadings ought to have mentioned the alleged officials as the principal parties sued on behalf of the church. In support of this argument, the Respondent relies on the High Court decision of *Skair Associates Architects v Evangelical Lutheran Church of Kenya and others* [2015] eKLR. In that case, the church was sued as the 1st defendant together with its officials who were sued as the 2nd to 5th defendants. The court found that the church could not be sued as a distinct defendant. It could only be sued through the other defendants. Consequently, the pleadings, in so far as they cited the church as the 1st defendant, were found to have been bad in law. The name of the church as the 1st defendant was struck off the case.
38. I think that the issue in the Skair Associates case (supra) was whether a church can be sued as a standalone party. The court said, and rightly so, that it cannot as it lacks legal personality. It can only be sued through its officials. The case of *Trustees Kenya Redeemed Church & another v Samuel M'obuya Morara & 5 others* [2011] eKLR raised the same issue.
39. In the case before me, the Respondent has not been sued as a standalone defendant. It has been sued through its named officials. This then distinguishes the Skair Associates case from the case before me.
40. Whether the pleading describe the officials as "sued on behalf of the church" or whether the action is described as filed against the church "through its officials" is in my view an issue of semantics. The fact of the matter is that the effect of the pleadings is to demonstrate that the intended defendant is the unincorporated body but sued through its officials as no suit can be maintained against it on its own.
41. The Respondent's counsel submits that the three individuals named in the action cannot be liable for the omissions and or commissions of the Respondent. They should not be vexed for matters that should be directed at the church. Counsel submits that the Claimant has not demonstrated the wrong committed by the three individuals to justify their inclusion in the suit.
42. Further, counsel argues that the three cannot tell the exact case that they face. They will not know the defense to urge before the court. They will not know the witnesses to call.
43. The answer to this contention appears clear to my mind. The three individuals are not sued for any personal wrongs against the Claimant. They are only sued as officials of the Respondent. They shoulder no personal responsibility for the current action. They face no case of their own in their individual capacities. They are not expected to advance their personal defense but that of the church. Put differently, the three are only a vehicle through which this action is legitimately maintained against the unincorporated entity.
44. The ultimate responsibility for the action lies with the Respondent through its General Assembly. In the event that an adverse order issues against the Respondent requiring it to make monetary payments, it will be up to the General Assembly to direct the Respondent's trustees to apply the Respondent's property under their control to satisfy the order. I must also add that a successful litigant is entitled to move against such property, once identified, irrespective of the decision taken by the General Assembly as long as there is an enforceable court order.
45. The Respondent's counsel poses interesting questions in a bid to persuade me to find that the action by the Claimant is ill advised. He asks, as was asked in the Skair Associates case, what will happen if the court was to be moved for contempt proceedings in the event there is noncompliance with a court



order by the Respondent having been sued in the current form? Who will be liable for the breach? Will it be the General Assembly or the Council?

46. In my view, to pose these questions is to suggest that unincorporated entities cannot be sued even in the manner allowed by law because of the possible challenges that may arise from enforcing court orders against them. Such organizations have officials and general membership who have the singular duty, jointly and severally, to ensure that court orders are observed. In the event of disobedience, action is expected to be taken against the entirety of the membership and officials of the organization; not just those who had been sued unless of course it is shown that they have specifically stood in the way of implementing the court order.
47. Counsel for the Respondent submits that under its Constitution, only the Respondent's trustees may sue or defend legal action against the Respondent on its behalf. He relies on article XVIII of the Constitution to advance this argument. The relevant clause provides as follows:-

“Subject to the prior approval of the General Assembly, the trustees shall have power to take or defend any legal proceedings on behalf of the church.”
48. Counsel argues that the Claimant should have exercised due diligence by conducting a search to confirm who the Respondent's trustees are in order to file suit against them. That a perusal of the Respondent's Constitution should have made it clear to the Claimant that only the trustees of the Respondent could be sued.
49. I do not agree with this argument. First, according to the clause aforesaid, the power of the trustees to sue or defend the Respondent is subject to prior approval by the Respondent's General Assembly. It is not automatic. One must then ask: what happens if the Respondent has to sue or has been sued but the General Assembly has not authorized its trustees to sue or defend the action? Does it mean that the Respondent will be rendered helpless in the circumstances? I think not. The Respondent can still sue or defend suits against it through any of its other officials as contemplated under section 2 of the *Societies Act*.
50. Whilst it is true that the Respondent's Constitution is a public document and that information regarding the Respondent's trustees can be readily available upon a simple search at the Registry of Societies, it is clear to me that information regarding whether the Respondent's General Assembly has sanctioned its trustees to sue or defend legal action against it is internal information that is not available to the public. Such information is only within the special knowledge of the Respondent. Therefore and in terms of section 112 of the *Evidence Act*, it is for the Respondent to prove that its trustees had the approval of the General Assembly to be sued on its behalf if it asserts this as the factual position.
51. The Respondent's counsel has argued that it is an abuse of the court process to just splash names of individuals in a suit without explaining why. That such action renders the suit vexatious. In support of his position, counsel relies on obiter dicta from the case of Skair Associates (*supra*).
52. For my part, I think that it is not for the court to require parties to demonstrate at the preliminary stage of a matter why they have elected to sue particular individuals as long as the cause of action is prima facie pleaded. Parties have a legitimate right to sue as they please. Except of course in the clearest of cases, the question whether a suit is justified can only be determined at the tail end of the action after evaluating evidence that is tendered.
53. Whilst I appreciate the views expressed by my sister in the case of Skair Associates (*supra*) on the foregoing issue, I respectfully disagree with the approach she took on the matter. As long as the law contemplates that an action against an unincorporated entity must be filed through its officials, I do



not think that it was a requirement that the Plaintiff demonstrates at the preliminary stage of the case why it had opted to sue one set of officials of the Respondent as opposed to the other.

54. Indeed, similar arguments as the ones taken in the case before me have been raised by the Respondent at the preliminary stage of litigation in other matters involving it. And the court has observed that the question whether the individuals sued were the proper officials to be sued was a matter that required ventilation through a full trial (see *Bishop Bakari Kea v Evangelical Lutheran Church in Kenya (Elck) Through Arch-Bishop Walter Obare Omwanza & 2 others* [2016] eKLR).
55. I do not pretend to overlook the observations by the Court of Appeal in the case of *Muchunga Investment Ltd v Safaris Unlimited (Africa) & 2 others* (2009) eKLR, that only cases with discernible issues should be allowed to see the light of the day. Nevertheless, I do not understand the court as saying that the court, should at the slightest trigger, throw out cases. In my view, only those cases that are, prima facie, hopeless should fall by the wayside without the benefit of a trial.
56. Indeed, this position is affirmed by the very same Court of Appeal in *D.T. Dobie & Company (Kenya) Limited v Joseph Mbaria Muchina & another*[1980] eKLR when it stated as follows:-
- “No suit ought to be summarily dismissed unless it appears so hopeless that it plainly and obviously discloses no reasonable cause of action, and is so weak as to be beyond redemption and incurable by amendment. If a suit shows a mere semblance of a cause of action, provided it can be injected with real life by amendment, it ought to be allowed to go forward for a court of justice ought not to act in darkness without the full facts of a case before it.”
57. Whilst the Respondent contends that Benjamin Lemosi is no longer an official of the Respondent church, it is noted that this position is informed by an official search conducted on 19th July 2022 long after this case was filed. This search cannot be relied on to advance the argument that the said Benjamin Lemosi was improperly sued particularly in view of the implied admission in the defense that the individual was an official of the Respondent at the time suit was filed.
58. From the record before me, the only official whom both parties appear to have consensus at this preliminary stage that he may have been wrongly included in the suit is one Muchiri Kariuki. Whilst the Respondent has from inception consistently denied that this individual was its official at the time of filing suit or even after, the Claimant now appears to indirectly concede this fact by indicating that she relied on an old search to arrive at the conclusion that the gentleman was the Respondent organization’s treasurer. She now describes the inclusion of his name in the case as one of mis-joinder of parties arising from an honest but mistaken belief about his status in the Respondent.
59. Having regard to the foregoing and taking into account the Respondent’s position that it would like to be heard on any application for substitution, it is the court’s view that whilst the name of Muchiri Kariuki may be struck off these proceedings, the removal of the name of Benjamin Lemosi must be left to the Claimant to elect to move the court by way of a formal request for substitution. This is because it was not disputed in the defense that the said Benjamin Lemosi was properly sued. He is said to have left office after institution of these proceedings. Therefore, his can only be a case of substitution which the Respondent suggests, and rightly so, that it must be heard on upon a formal application.
60. A final matter that I wish to comment on is whether substitution of parties to the action would be barred by the law on limitation of actions as set out under section 90 of the *Employment Act*. The Respondent suggests that this is the position. I do not think so.



61. The cause of action in the case arose on 25th November 2018 when the Claimant alleges she was forced into resigning from employment. Suit was then filed on 31st October 2019 within the three year limitation period contemplated under section 90 of the *Employment Act*.
62. From the preliminary record, the case was initially filed against the Respondent through at least two uncontested officials, Benjamin Lemosi and Joseph Ochola. If any of these officials are to leave office precipitating the need to substitute them, this will not occasion the bringing on board of new Respondents outside the time set under section 90 of the *Employment Act*.
63. As stated earlier such new individuals are not sued in their personal capacities. They are sued on behalf of the Respondent which as has been observed was sued through its then officials within the limitation of actions period.

Determination

64. In view of the above observations, I make the following orders in respect of the application dated 26th October 2022:-
 - a. The action, having been instituted against the Evangelical Lutheran Church in Kenya (ECKL), an unincorporated body, through its two undisputed officials at the time (Benjamin Lemosi and Joseph Ochola), it was properly commenced. As such I decline to strike out the Statement of Claim or the name of the church as requested.
 - b. As the parties agree that Muchiri Kariuki was not an official of the church at the time of institution of the case and remained a non-official of the organization at the time of arguing the application dated 26th October 2022, I strike out his name from these proceedings.
 - c. As it was not denied in the Statement of Defense that Benjamin Lemosi and Joseph Ochola were officials of the Respondent at the time of institution of the suit, I decline to strike out their names from the proceedings.
 - d. As the record at the Registrar of Societies' office shows that Benjamin Lemosi has since ceased being an official of the Respondent and has been replaced with a new official, it is up to the Claimant to move the court, if she elects, for substitution as appropriate.
 - e. Costs of the application shall be in the cause.

DATED, SIGNED AND DELIVERED ON THE 2ND DAY OF FEBRUARY, 2023

B. O. M. MANANI

JUDGE

In the presence of:

..... for the Claimant/Respondent

.....for the Respondent/Applicant

ORDER

In light of the directions issued on 12th July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

B. O. M MANANI

